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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,287	11/28/2000	Anthony J.M. Garwood	CRSL115949	7548

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EXAMINER

BECKER, DREW E

ART UNIT PAPER NUMBER

1761

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/724,287

Applicant(s)

GARWOOD, ANTHONY J.M.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 353-373 and 422-843 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 353-373 and 422-843 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 422-423, 425-426, 461, 465, and 481 are rejected under 35 U.S.C. 102(a) as being anticipated by The Wiley Encyclopedia of Packaging Technology, Second Edition.

Wiley teaches a method of packaging meat by obtaining meat primals, transferring them to foam packaging trays, transferring to barrier film containers, introducing gases including carbon monoxide, sealing the containers, reducing bacteria, removing oxygen, and storing the containers (page 651-654).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 430-432, 438-439, 457-460, 469-470, 482-483 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al [Pat. No. 4,171,164] in view of Inglis et al [Pat. No. 6,224,930].

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Groves et al teach a method for producing meat by providing two streams of meat with fat, measuring the fat content of the streams, blending the streams in a vessel with gas, a printing station for information such as fat content and batch number related to the animal from which it was harvested (column 4, line 66 to 5, line 20), and conduits (Figure 1, #53-56). Groves et al do not teach treating the meat with a bacteria reducing agent, transferring to barrier packages which are case-ready modified atmosphere packages, and removing oxygen from the packages, sealing the packages. Inglis et al teach a method of treating meat by applying a bacteria reducing agent in the form of carbonic acid (column 4, line 50), exposing the meat to carbon dioxide (column 7, line 41), determining the water content and adding the proper amount (column 4, line 10), the use of sealed, case-ready barrier packages (column 3, line 53), and the removal of oxygen and use of a modified atmosphere in the barrier package (column 1, lines 10-18). It would have been obvious to one of ordinary skill in the art to incorporate the carbonic acid and packaging techniques of Inglis et al into the invention of Groves et al since both are directed to methods of processing meat, since Groves et al used raw meat which often included bacteria, since Groves et al would have required some means to package the blended raw meat, since the carbonic acid of Inglis et al would have reduced the amount of bacteria without negatively impacting the taste of the meat (column 3, line 25-28), and since the packaging of Inglis et al would have effectively preserved the meat of Groves et al (column 1, lines 10-18). It would have been obvious to one of ordinary skill in the art to include water information on the label of Groves et al, in view of Inglis et al, since both are directed to methods of processing meat, since

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Groves et al already included printing information on the package (column 4, line 66 to 5, line 20), since Inglis et al included the step of adding moisture to the meat (column 4, line 10), since water was a nutrient and therefore could have been included on Nutritional labels which were required on food products, and since Nutritional labels commonly listed components by percentage.

5. Claims 353-356, 358-360, 366-373, 427-428, 433-435, 437, 440-444, 447-452, 455-456, 462, 464, 466, 468, 471-475, 477, and 479-480 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of Inglis et al, and further in view of Goldsmith [Pat. No. 5,306,466].

Groves et al and Inglis et al teach the above mentioned concepts. Inglis et al also teach the use of carbon dioxide and nitrogen (column 1, line 15). Groves et al and Inglis et al do not teach testing the packaged meat for bacteria. Goldsmith teaches a method of packaging meats by testing the packaged meat for bacteria, such as E. coli (abstract; column 1, line 44), the use of indicia (Figure 2, #16), and a tray with a recess (Figure 1, #10). It would have been obvious to one of ordinary skill in the art to incorporate the testing of Goldsmith into the invention of Groves et al, in view of Inglis et al, since all are directed to methods of processing and packaging meat, since Groves et al made use of raw meat which often contained bacteria, since meat contaminated with bacteria often caused illness in the consumer, and since the testing of Goldsmith would have provided an effective means to determine whether the packaged meat was contaminated with bacteria (abstract).

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6. Claim 357 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al in view of Inglis et al and Goldsmith, as applied above, and further in view of The Wiley Encyclopedia of Packaging Technology, Second Edition.

Groves et al, Inglis et al, and Goldsmith teach the above mentioned concepts. Groves et al, Inglis et al, and Goldsmith do not teach a chub package. Wiley teaches a chub meat package (page 204). It would have been obvious to one of ordinary skill in the art to incorporate the chub package of Wiley into the invention of Groves et al in view of Inglis et al and Goldsmith, since all are directed to methods of processing and packaging meat, since Groves et al included the blending of ground meat, and since ground meat was often packaged in chub packages as shown by Wiley (page 204).

7. Claims 453-454 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley.

Wiley teaches the above mentioned concepts as well as Nutritional labeling (pages 674-680). It would have been obvious to one of ordinary skill in the art to include water content in the labeling of Wiley since Wiley teaches that Nutritional labeling was required on foods (page 674-680) and since water was a nutrient.

8. Claims 360-365, 424, 445-446, 463, and 478 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Wiley Encyclopedia of Packaging Technology, Second Edition in view of Goldsmith.

Wiley teaches a method processing meat by obtaining meat primals with fat and water, reducing the bacteria, transferring the primals to containers, removing the oxygen, sealing the containers, storing the containers, removing the primals and cutting then into

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portions, placing them in barrier packages, introducing gas into the package, sealing the package, a high oxygen environment, and a low oxygen environment (page 654, first column), and nutrition labeling (pages 674-680). Wiley does not teach testing for bacteria, or *E. coli* specifically. Goldsmith teaches a method of packaging meats by testing the packaged meat for bacteria, such as *E. coli* (abstract; column 1, line 44). It would have been obvious to one of ordinary skill in the art to incorporate the testing of Goldsmith into the invention of Wiley since both are directed to methods of processing and packaging meat, since Wiley made use of raw meat which often contained bacteria, since meat contaminated with bacteria often caused illness in the consumer, and since the testing of Goldsmith would have provided an effective means to determine whether the packaged meat was contaminated with bacteria (abstract). It would have been obvious to one of ordinary skill in the art to include water content in the labeling of Wiley since Wiley teaches that Nutritional labeling was required on foods (page 674-680) and since water was a nutrient.

9. Claims 429, 436, 467, and 476 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al, in view of Inglis et al and Goldsmith, as applied above, and further in view of Shaklai [Pat. No. 6,270,829].

Groves et al, Inglis et al, and Goldsmith teach the above mentioned concepts. Groves et al, Inglis et al, and Goldsmith do not teach the use of carbon monoxide. Shaklai teaches a method of packaging meat with carbon monoxide (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the carbon monoxide of Shaklai into the invention of Groves et al, in view of Inglis et al and Goldsmith, since all are

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directed to methods of processing and packaging meat, since Inglis et al already included a modified atmosphere package (column 1, line 15), and since Shaklai teaches that carbon monoxide maintained the color and freshness of the meat while also retarding bacterial growth (abstract).

Response to Arguments

10. Applicant's arguments filed August 13, 2003 have been fully considered but they are not persuasive.

Applicant argues that Wiley does not teach the claimed order. However, Wiley clearly teaches transferring meat to foam packaging trays, overwrapped with barrier film, introducing gas to the barrier container, the gas including carbon monoxide, and sealing the barrier container (pages 651 & 654).

Applicant argues that Wiley teaches using carbon monoxide only with fruit. However, page 651 of Wiley discloses that carbon monoxide was a commonly used anti-microbial agent, and simply lists fruit as an example of a food which would benefit. Furthermore, Wiley teaches that meat was commonly contaminated with microorganisms (page 653). In addition, carbon monoxide was a commonly known gas for meat packaging for the above reasons.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., barrier containers which are oxygen impermeable) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from

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the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion


11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.


Drew E Becker
Primary Examiner
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